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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,005	03/17/2004	Robert T. Ellingson	A042 1100.1	4422

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Atlanta, GA 30357-0037

EXAMINER
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GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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02/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,005	<b>Applicant(s)</b> ELLINGSON, ROBERT T.	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

This is a Final Office Action. Claims 20 and 22-24 have been cancelled. Claims 1-19 and 21 are pending.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 15** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "said nailing flange" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102/103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-19 and 21** are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Young (U.S. Patent No. 6,125,605).

Claim 1: Young discloses a frame comprising a sill, a pair of spaced side jambs and a head jamb spanning the side jambs and a unitary plastic member (see Fig. 2: 20) attached to the head jamb, the plastic member configured to define a flashing strip (24) overlying and covering an upwardly facing top surface of the head jamb to inhibit moisture contact with the head jamb, a nailing fin (proximate 28: it is unitary in that 28 is attached to portion 20 via 30) projecting upwardly from the flashing strip and away from the head jamb to attach the frame to an adjacent structure with fasteners extending through the nailing fin (see slots on the fin) and a drip edge (see "A" from

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attached Fig. 2 from Young, below) extending along an upper outside corner of the head jamb to direct water from the flashing strip away from the head jamb. In case the applicant disputes the definition of "unitary plastic member", it would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the piece a single member because as shown in the drawings portion 28 and 24 are connected via a staple, so therefore making the piece a single piece is within the level of skill in the art in order to, for example, aid in the ease of manufacture in reducing processing steps.

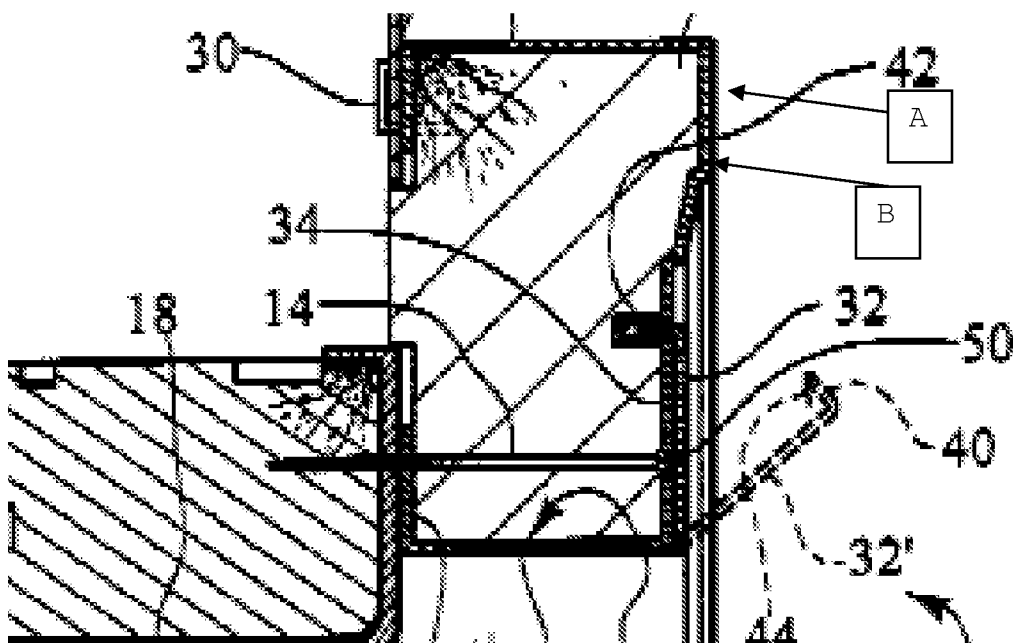


Figure 2 from Young

Claims 2 and 16: the nailing fin is attached to the flashing strip with a flexible hinge (the juncture between portions 24 and 28 form a flexible hinge via member 30.)

Claim 3: the drip edge includes a lip ("B" above).

Claim 4: the frame is a door frame.

Claim 5: the plastic member includes a construction cover (32) configured to cover and protect a front face portion of the head jamb.

Claim 6: the construction cover is removable from the plastic member (via portion 42: it is removable in that it can be removed to expose portion proximate 50.)

Claims 7 and 18: the cover is attached to the plastic member with a tear-away connection (42), the connection separates as the cover is removed.

Claim 8: the side jambs and head jamb include brick mold (Col. 2, lines 8-15), the flashing strip covers an upwardly facing top surface of the brick mold (12).

Claim 9: the plastic member further defines a cover configured to cover and protect a portion of said brick mold (32) along the head jamb.

Claim 10: Young discloses a door assembly comprising a threshold, a pair of side jambs and a head jamb, brick mold (12:

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Col. 2, lines 35-40) extending along the vertical jambs and head jamb, a plastic member (20) securely attached to the brick mold along the head jamb, the plastic member defining both a permanently attached flashing strip (24) overlying an upper top surface of the brick mold to inhibit moisture contact with the brick mold, and a removable construction cover (32) overlying an outside face of the brick mold to protect the outside face from damage until it is removed (it is removed in order to attach member 14).

Claim 11: the construction cover is attached to the flashing strip with a tear away hinge (42) that separates to allow the cover to be removed.

Claim 12: A drip edge ("A" above) formed along the flashing strip.

Claim 13: the cover is removably attached along the drip edge (via portion 42).

Claim 14: the cover is attached with a tear-away connection (42).

Claim 15: the plastic member has a nailing fin (28) projecting outwardly from the flashing strip and away from the door assembly for fastening the assembly to surrounding structure with fasteners extending through the nailing flange (the examiner interpreted this limitation as "nailing fin".)

Claim 17: the same cover strip is over the side jambs (see Fig. 1, generally.)

Claim 19: Young discloses a frame for a door having a sill, side jambs and a head jamb and brick molding surrounding the frame along an outside edge of the jambs and a plastic member (20) extending along at least the head jamb, the plastic member having a permanently attached flashing strip (24) that overlies an upper top surface of the brick mold to protect the mold from moisture, and a removable cover (32) that overlies and protects an otherwise exposed surface (it is exposed to portion proximate 50 as applicant does not provide limitation as to what the molding is exposed) of the mold that is removable. The phrase "is removed after construction" is a method step and only the final product is provided patentable weight. The portion can be "removed" and replaced at any time.

Claim 21: the plastic member has a nailing fin (28) for attaching the frame in a rough in opening.

### ***Response to Arguments***

3. The following addresses applicant's arguments/remarks dated 28 November 2007:

**35 USC 102(a) vs. 102(e) rejection:**

The examiner respectfully disagrees with applicant's note that 102(e) was the proper statute to be used instead of 102(a) as used by the examiner for Schiffmann (U.S. Patent No. 7,204,059). The publication date of the Schiffmann reference is 15 January 2004, which is prior to the filing date 17 March 2004. Therefore, the 102(a) rejection was appropriate.

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as applicant amended the claims.

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

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statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./  
Examiner, Art Unit 3635

/Basil Katcheves/  
Primary Examiner, Art Unit 3633